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1948 Edition



NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL

COMMITTEE ON EMPLOYMENT DISCRIMINATION

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1948 edition

. . . the time for action is now

**— President's Committee on Civil Rights
October 29, 1947**

prepared by the

**committee on employment discrimination
of the**

**national community relations advisory council
295 madison ave., new york 17, n. y.**

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"Yet most of all grant us brotherhood, not only for this day but for all years—a brotherhood not of words but of acts and deeds. We are all of us children of the earth—grant us that simple knowledge. If our brothers are oppressed, then we are oppressed. If they hunger, we hunger. If their freedom is taken away, our freedom is not secure. Grant us a common faith that man shall know bread and peace—that he shall know justice and righteousness, freedom and security, an equal opportunity and an equal chance to do his best, not only in our lands, but throughout the world. And in that faith, let us march toward the clean world our hands can make. Amen."

—FRANKLIN DELANO ROOSEVELT,
extract from Prayer for the
United Nations, June 3, 1942.

1

Why an FEPC Is Needed Now

Discrimination is Increasing

"The wartime gains of Negro, Mexican-American, and Jewish workers are being dissipated through an unchecked revival of discriminatory practices. The future status of minority group workers depends on the course of action to be taken by the Congress relative to the passage of Federal fair employment legislation."

—Letter of Transmittal and Resignation, Committee on Fair Employment Practice, June 28, 1946.

THE TASK of measuring the precise extent of employment discrimination is admittedly difficult. Government agencies do not inquire into the religious background of job applicants nor do trade unions record the religious affiliation of their members. The United States Employment Service, which, during the war, constituted the chief source of information about non-white workers, ceased gathering such data after V-J Day. Equality of opportunity is so firmly embedded in the American creed that even extreme violators almost never admit their discriminatory practices. Resistance and guilt thus combine to make the fact-finding task even more difficult.

Discrimination Against Jewish Workers

Although these factors make an overall statistical analysis impossible, surveys and reports from cities throughout the country afford ample evidence of an alarming rise in discriminatory employment practices. During the past year, the National Community Relations Advisory Council conducted a survey of discriminatory employment practices against Jews in 15 cities, comprising approximately 80% of the Jewish population of the United States. A study of help-wanted advertisements in eight cities during corresponding periods in 1946 and 1945 revealed an *increase of 195% in discriminatory ads* for 1946 over 1945—despite a marked decline in the total volume of help-wanted advertising. An analysis of the complaints of employment discrimination filed with Jewish agencies in six cities during corresponding periods in 1945 and 1946 showed an *increase in complaints of 93%* for the latter period. Visits to 134 employment agencies in 10 cities indicated that *89% of the agencies included questions about religion* on their registration forms, and two-thirds of the same agencies reported greater difficulty in placing Jewish

workers. In Chicago, an actual statistical count of discriminatory job orders by one of the largest commercial agencies in the city showed that 60% of the executive jobs, 50% of the sales executive jobs, 41% of the male clerical openings and 24% of the female clerical openings were closed to Jews, and fully 83% of all orders placed with the agency carried discriminatory specifications.

Discrimination Against Negroes

The increase in discriminatory practices against non-white workers is even more startling.

United States Census Bureau surveys reveal that whereas in July, 1945, 1.7% of white workers were unemployed as compared with 2% of non-white workers, by April, 1947, the proportion of unemployed had risen to 3.8% among white workers and to 6.7% among non-whites. In other words, unemployment increased by about 1½ times among white workers while it more than tripled among non-whites. Reports from a few cities suffice to indicate that the problem is not confined to any one section of the country. In the Pacific Coast states:

"The net result of the war and post-war adjustments has been to bring Negro unemployment back to a close resemblance, statistically, to the prewar pattern. The current unemployment of 30% of the Negro workers contrasts very unfavorably with the unemployment ratios of only around 10% for other workers. This means, when measured against the Negro population increase, that the actual number of Negro unemployed has almost tripled since 1940, while "white" unemployment remains below the prewar totals. That comparison is the best single statistical measure of the extent of employment discrimination against the Negroes."¹

In Seattle, Negro employment in January, 1945 represented 5.2% of the total employment. This figure dropped to 3.6% in January, 1946, and to 2.1% in January, 1947. During this same period, the percentage of non-white placements by the King County Employment Office dropped from 7.6% in January, 1945, to 4.4% in 1946 and to 3.0% in January, 1947.

In Detroit, discriminatory job orders listed with the USES during 1946 averaged about 22% of the total openings. By January, 1947 they had risen to 40.7%, dropped to 28.9% in February, climbed to

1. Mr. Fay Hunter, Regional Director, United States Employment Service.

42.9% in March, and continued upward to 44.4% in April. At the end of April 70% of the available semi-skilled and unskilled openings carried discriminatory specifications.²

"Statistics are also available from the Ohio State Employment Service which indicate the practice of many employers of refusing to consider the qualifications of a Negro worker. From February 1, 1946 through October 30, 1946 a record was kept of all requests for workers received with the following results:

Total requests for new workers	61,110
No. of requests specifying "white only"	14,488
Discriminatory relaxations secured	219
Percentage of "white only" jobs	23.7

"In other words, for every four job openings which became available during the nine months on record one job opening was closed to colored workers. The significance of this fact is important because it means that persons seeking work were denied an opportunity to discuss with a prospective employer their training, experience, and other qualifications for performing the work which he needed done. *The ineffectiveness of voluntary and "educational" efforts to secure the elimination of job discrimination is indicated by the fact that only 219 openings were obtained for Negro workers which were previously closed to them.* A special department of the Ohio State Employment Service devotes time to eliminating job discrimination and the above results were obtained *from nine months of effort.*

"Furthermore, employment service officials stated that the 23.7% figure must be considered a *minimum* since an undetermined number of job openings were discriminatory although not specified as such in their requests for new workers."³

Coincident with increased discrimination at the hiring gate has been a forced retreat from skilled and semi-skilled jobs into the unskilled classifications and from production to service jobs. Less than 1/4 of the wartime placements of non-white workers were in service occupations as compared with more than half in 1947. A series of

2. Cited in testimony of Walter P. Reuther, President, United Automobile Workers of America, CIO.

NOTE: Except as otherwise indicated, all references to statements and testimony are to hearings before a Subcommittee of the Committee on Labor and Public Welfare of the U.S. Senate on S. 984, June-July, 1947.

3. Report of Community Relations Board of Cleveland, October, 1947.

*Labor Market Reports*⁴ issued by the United States Department of Labor vividly illustrates this point.

From the report for April, 1947 on "Agricultural Machinery and Tractors," page 22:

The industry offers few job opportunities to non-whites. They are employed chiefly in unskilled jobs.

The September, 1946 report on "The Hosiery Industry," page 14:

Few opportunities exist for non-whites who constituted only 2 per cent of employment. Except for a very few establishments in Tennessee which reported non-whites in production jobs, *the vast majority of non-whites were used as maintenance workers.*

In the same report on "Banking and Trust Companies," page 36:

The proportion of non-whites probably will not rise above 2 per cent. Restrictions against the employment of non-whites are frequent in the banking industry, and there is no indication of any change in policy. With the exception of banks serving predominantly non-white communities, *the use of non-whites is limited to custodial and other service occupations.*

The October, 1946 report, Series 15-2, on "Prefabricated Housing," page 2, includes the following statement:

So far as can be determined, non-whites are hired almost exclusively for unskilled and maintenance jobs.

The same report on the "Telephone Communications Industry," page 25, says:

The number of non-whites employed in the industry is insignificant, and they are almost always assigned to work as janitors, porters, and food handlers.

The November, 1946 report on "Bakery Products," page 11, says:

Employment of non-whites remained stable between August and October. *They are usually employed, however, only as porters, janitors, dishwashers, and pan greasers.*

Discrimination Against Other Americans

Although these data refer primarily to discrimination against Jews and Negroes, it is only because statistics are more readily available with respect to those groups. Similar experiences, however, often in even more aggravated form, are being shared by countless other Americans whose mode of worship, national origin, or skin color serve to disqualify them for securing employment commensurate with their abilities.

4. Cited in testimony of Julius A. Thomas, Director, Industrial Relations, National Urban League.

surate with their ability. Witnesses before the President's Committee on Civil Rights testified as follows:

The Japanese Americans: "We know, too, what discrimination in employment is. We know what it means to be unacceptable to union membership; what it means to be the last hired and first fired; what it means to have to work harder and longer for less wages. We know these things because we have been forced to experience them."

The Mexican Americans: "We opened an employment bureau (to help Mexican Americans) in our office last year for San Antonio. We would call certain firms and say we heard they had an opening for a person in a stock room or some other type of work; or I would go myself. But thinking I was the same in prejudice as they, they would say, 'You know we never hire Mexicans'."

The American Indians: "As with the Negroes, Indians are employed when there is a shortage of labor and they can't get anyone else. When times get better, they are the first to be released."⁵

It should be remembered that these reports of discriminatory practices relate to a period when employment is at the highest peacetime level in our nation's history. Discrimination is always intensified by downward shifts in the economic cycle. Current practices must therefore be regarded as but the precursors of even more widespread discrimination should jobs grow scarcer and no effective legislative remedies be made available to prohibit discriminatory employment practices. It is to be hoped that "Members of both the Senate and House of Representatives will pay no heed to the voices crying: 'Do nothing about this situation.' In every great struggle for progress and justice in the whole history of civilization there are always such voices, always the advocates of a do-nothing policy."

"Rather (it is hoped they) will recall the words of George Washington that this Government will 'give to bigotry no sanction.' For today under economic conditions which could not have been foreseen in his time, the mere absence from the fabric of our law of any expression condemning unfair or discriminatory employment practices might be construed as giving them unwritten sanction."⁶

5. *To Secure These Rights*, Report of the President's Committee on Civil Rights, p. 55, U.S. Government Printing Office, Washington, 1947.

6. Testimony of Frank Goldman, President, B'nai B'rith.

Discrimination is Immoral and Unjust

"1. The organization of a just peace depends upon practical recognition of the fact that not only individuals but nations, states and international society are subject to the sovereignty of God and to the moral law which comes from God.

"2. The dignity of the human person as the image of God must be set forth in all its essential implications in an international declaration of rights and be vindicated by the positive action of national governments and international organization. States as well as individuals must repudiate racial, religious or other discrimination in violation of those rights.

"3. National governments and international organization must respect and guarantee the rights of ethnic, religious and cultural minorities to economic livelihood, to equal opportunity for educational and cultural development, and to political equality.

—Declaration on World Peace released October 7, 1943, by the Federal Council of the Churches of Christ in America; the Social Action Department of the National Catholic Welfare Conference; and the Synagogue Council of America.

THE FATHERHOOD OF GOD, the Brotherhood of Man, and the innate dignity and worth of the human person—these are the central doctrines of Judaeo-Christian teachings.

Recognizing that discrimination in employment because of race, religion, color, national origin, or ancestry violates these fundamental principles, religious bodies of all faiths have characterized the effort to eliminate such discrimination as "one of the great moral issues before our nation today" and have united in calling for the enactment of federal fair employment practices legislation.

Spokesmen for the Federal Council of the Churches of Christ in America have emphasized that "the economic front cannot be divorced from the moral and spiritual principles which underlie human relationships." The "right to work," they declared, "is a

divine right . . . so just and so in harmony with Christian ethics that all Christians and Church agencies have a deep responsibility to stand for that clear Christian and democratic principle. We believe that government should take such necessary legislative and administrative action as will protect the right to work from any such discrimination."¹

The Synagogue Council of America, comprising the Orthodox, Reform, and Conservative branches of Judaism, similarly has denounced discrimination as "immoral and against all religious principle" and has urged passage of S. 984 declaring that "the aims of the bill are not merely legislative but really spiritual in language and character."²

The National Catholic Welfare Conference, the official body of the Roman Catholic Church appointed by the Bishops of the United States, has not only endorsed fair employment practices legislation but has proclaimed it to be the duty of employers to assist in securing such legislation. A statement issued by the National Catholic Welfare Conference in July, 1946 reads:

Christian moral teaching requires every employer to maintain and enforce non-discriminatory policies in hiring, upgrading and discharge. In addition, it requires each employer not only to cease opposition to the enactment of Federal and state FEPC laws, but to use his influence in his association and with his fellow employers to secure the passage and assist in the enforcement of such statutes.

"A fair employment practice law," declared Bishop Bernard J. Sheil, of Chicago, Auxiliary Bishop of the largest Roman Catholic Archdiocese in the world, "would give legal recognition to that God-given dignity which every human being possesses. If we are truly Christian, we cannot preach one thing and practice another. . . . Economic discrimination is immoral; it is clearly sinful. How long are we expected to sit by while children of God find their paths blocked at every point by the forces of bigotry and discrimination?"³

1. Testimony of Dr. Beverly M. Boyd, Secretary, Department of Christian Social Relations and Dr. J. Oscar Lee, Executive Secretary, Department of Race Relations, Federal Council of the Churches of Christ in America.

2. Testimony of Rabbi William F. Rosenblum, President, Synagogue Council of America.

3. Testimony of Bishop Bernard J. Sheil.

Discrimination is Un-American and Undemocratic

"To the American Government and citizens it (democracy) has a basic meaning. We believe that human beings have certain inalienable rights—that is, rights which may not be given or taken away. . . . To us a society is not free if law-abiding citizens live in fear of being denied *the right to work* or deprived of life, liberty and the pursuit of happiness."

—From statement of Secretary of State George C. Marshall to Council of Foreign Ministers, Moscow, March 14, 1947.

"THE CENTRAL theme in our American heritage is the importance of the individual person. From the earliest moment of our history we have believed that every human being has an essential dignity and integrity which must be respected and safeguarded. Moreover, we believe that the welfare of the individual is the final goal of group life. Our American heritage further teaches that to be secure in the rights he wishes for himself, each man must be willing to respect the rights of other men. This is the conscious recognition of a basic moral principle: all men are created equal as well as free. Stemming from this principle is the obligation to build social institutions that will guarantee equality of opportunity to all men. Without this equality freedom becomes an illusion. Thus the only aristocracy that is consistent with the free way of life is an aristocracy of talent and achievement. The grounds on which our society accords respect, influence or reward to each of its citizens must be limited to the quality of his personal character and of his social contribution. . . . Thus, the aspirations and achievements of each member of our society are to be limited only by the skills and energies he brings to the opportunities equally offered to all Americans. We can tolerate no restrictions upon the individual which depend upon irrelevant factors such as his race, his color, his religion or the social position to which he is born."¹

Fair employment practice legislation is based on the premise that

1. *To Secure These Rights*, Report of the President's Committee on Civil Rights, p. 4, U.S. Government Printing Office, Washington, 1947.

the right to earn a livelihood is a civil right. Section 2b of the Ives-Chavez bill (S. 984) provides:

The right to employment without discrimination because of race, religion, color, national origin, or ancestry is hereby recognized as and declared to be a civil right of all the people of the United States.

This declaration is not the creation of a *new* civil right. It is merely the recognition of a natural and inalienable right which the courts have always recognized as inherent in the Constitution and public policy of the United States. The right to life, the most primary of all civil rights, can have no fulfillment without the right to work.

U.S. Supreme Court Ruling

Some years ago, Mr. Justice Hughes delivered a majority opinion for the United States Supreme Court, Mr. Justice McReynolds being the sole dissenter, in which the Court said, "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (Fourteenth) Amendment to secure."²

"Denial or curtailment of the right to work by reason of race, religion, color or national origin, deprives minorities 'of their constitutional right to earn a livelihood' (Carroll v. Local 269, 133 N.J.Eq.144, 147); 'menaces the institutions and foundation of a free and democratic state' (New York L.1944, ch. 692, s.1); and draws the nation toward the shattering abyss of racism and intolerance."³

Too many Americans give lip service to democracy, forgetting that democracy is peculiarly a product of action, that it has never been talked into being or rescued by words, that America from its earliest colonial days has been a battlefield in the struggle between bigotry and intolerance. If we do not believe in freedom, tolerance and the rights of minorities, we shall of course lose them. If we do believe in them, we must increase our practice of them.

"The denial of employment opportunities to our citizens because of their race, religion, or national origin is a flagrant violation of our democratic principles and of our traditional statements of public

2. Truax v. Raich 239 U.S.33, p. 41; 1915.

3. Testimony of Charles H. Tuttle.

policy. We cannot hold up our heads as self-respecting American citizens, and we certainly cannot successfully aspire to leadership in world affairs, so long as we make mockery of our high-sounding talk about justice and democracy by practices of discrimination which destroy the dignity and deny the rights of millions of our fellow citizens. It is high time that we correct this weakness in our public character by taking such forthright action against it that there can be no question of our sincerity and good faith. The enactment of Federal fair employment practice legislation with provisions for vigorous enforcement power and with a sufficient appropriation of funds to assure effective national administration would go a long way toward lifting this burden from our national conscience."⁴

"The future of our nation rests upon the character, the vision, the high principle of our people. Democracy, brotherhood, human rights—these are practical expressions of the eternal worth of every child of God. With His guidance and help we can move forward toward a nobler social order in which there will be *equal opportunity for all*."⁵

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4. Testimony of Hubert H. Humphrey, Mayor of Minneapolis.
 5. Report of President's Committee on Civil Rights, p. 175.

Discrimination is a Handicap in our Foreign Relations

"The equitable treatment of racial minorities in America is basic to our chance for a just and lasting peace. . . . We, as Americans, cannot be on one side abroad and the other at home. We cannot expect small nations and men of other races and colors to credit the good faith of our professed purposes and to join us in international collaboration for future peace if we continue to practice an ugly discrimination at home against our own minorities."

—Wendell L. Willkie—from an article published in *Colliers*,
October 7, 1944.

THE EXTENT to which our enemies exploited racial incidents in the United States during the war to promote anti-American propaganda among the colored peoples of Europe and Asia is well known. Less well known, but perhaps even more significant, were the protests of our friends. For example, the Mexican Chamber of Deputies established a special committee "for the purpose of keeping the attention of the Mexican Congress focussed on discrimination against Mexicans in the United States." In fact, Mexico placed restrictions against our importation of badly needed Mexican labor because of American discriminatory practices. And at the first London meeting of the United Nations, the United States was charged with discrimination against South American nationals.

The fact that foes and friends alike have used our discriminatory practices against us suggests the importance of our coming with clean hands into the council of a world composed two-thirds of colored people.

In a letter to the Fair Employment Practice Committee dated May 8, 1946, Acting Secretary of State Dean Acheson stated:

the existence of discrimination against minority groups in this country has an adverse effect upon our relations with countries. An atmosphere of suspicion and resentment in a country over the way a minority is being treated in the United States is a formidable obstacle to the development of mutual understanding and trust be-

tween the two countries. We will have better international relations when these reasons for suspicion and resentment have been removed.

The Department of State, therefore, has good reason to hope for the continued and increased effectiveness of public and private efforts to do away with these discriminations.

Nelson A. Rockefeller, former Coordinator of Inter-American Affairs, emphasized this same point in his recent testimony on behalf of S. 984 (June 13, 1947). Said he:

It is my belief that this bill will have a very significant effect upon our relations with the other American republics. Citizens of many of the nations of the western hemisphere have been disturbed as they have encountered concrete evidences of discrimination in this country. Passage of this bill would serve the very real purpose of reaffirming their faith in us and prove to them that our democracy is a real and vital way of life.

What Mr. Rockefeller said of the western hemisphere was applied with equal force to the peoples of the Middle and Far East by Paul V. McNutt, our first Ambassador to the Philippine Republic. Describing racial prejudice and discrimination as "the worm in the shining apple of our international prestige" at which "even the friendliest foreign governments look askance," Mr. McNutt declared, "The hundreds of millions of non-Caucasian peoples who inhabit the Orient . . . cannot be fully convinced that we are thorough-going apostles of the four freedoms until we show that we mean the four freedoms to be for everybody." (From an address at Lowell, Mass., June 26, 1947)

The Foreign Policy of the U.S.

In our foreign policy the United States stands committed to a policy of non-discrimination. As a participant in the Inter-American Conference in Mexico City on March 6, 1945, we joined with other nations in a resolution recommending that the participating governments "make every effort to prevent in their respective countries all acts which may provoke discrimination among individuals because of race or religion." In signing the Charter of the United Nations at San Francisco, and in the subsequent ratification of that Charter by the United States Senate, we undertook to promote "universal respect for and observance of human rights and freedoms for all without distinction as to race, sex, language, or reli-

as present in the United States. We cannot fight propaganda with arms. We must fight it with truth.”²

In the words of Ralph Waldo Emerson, “the peoples of the world cannot hear what we say because what we do keeps dinning in their ears.” “The United States is not so strong, the final triumph of the democratic ideal is not so inevitable that we can ignore what the world thinks of us or our record.”³ “If we are going to export democracy, we better get tooled up for mass production of it here at home.”⁴

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2. Testimony of Irving Salert, Field Director, Jewish Labor Committee.
 3. Report of President's Committee on Civil Rights, p. 148.
 4. Testimony of Hubert H. Humphrey, Mayor of Minneapolis.

Discrimination is Bad for Business

"The withholding of jobs and business opportunities from some people does not make more jobs and business opportunities for others. Such a policy merely tends to drag down the whole economic level. Perpetuating poverty for some merely guarantees stagnation for all. True economic progress demands that the whole nation move forward at the same time. It demands that all artificial barriers erected by ignorance and intolerance be removed. To put it in the simplest terms, we are all in business together. Intolerance is a species of boycott and any business or job boycott is a cancer in the economic body of the nation. I repeat, intolerance is destructive; prejudice produces no wealth; discrimination is a fool's economy."

—Eric Johnston, former Chairman of the U.S. Chamber of Commerce.

WHOLLY APART from moral and human considerations, but from a purely dollar and cents standpoint, it is becoming increasingly evident that employment discrimination represents a threat to the economic welfare of our nation.

In passing the Employment Act of 1946, Congress gave recognition to the fact that higher levels of employment and wages mean greater purchasing power, greater demand for the products of our factories and farms, a greater chance to help America at work and at peace. "If full employment is to be meaningful, it must provide not only that all workers shall be employed at some job, but that they shall be placed in the job in which they can produce most effectively the goods and services that meet the nation's needs. This cannot be accomplished if artificial barriers are raised to prevent workers from filling the jobs for which they are best qualified. Therefore, if the Federal government is to achieve the objective of continued full employment, it must act on its responsibility to prevent discrimination on the basis of race, religion, national origin, or ancestry."¹

1. Testimony of Hubert H. Humphrey, Mayor of Minneapolis.

"Any community of workers that is discriminated against in employment is also a community of consumers that discriminates against the purchase of American-made goods. Any man who can't earn can't buy. The bare subsistence group in the American community is not on the market for radios, automobiles, washing machines, nor even bathtubs.

"Furthermore, the costs of discrimination in terms of productivity, although difficult to measure, are substantial. When an employer is limited in his choice of qualified employees to certain racial or religious groups, he cannot always choose the most skilled men for the job. Every time he must hire the poorer man, productivity suffers and costs of production are increased. Likewise, when a skilled mechanic must take a job as a servant, the community suffers a double loss. Not only is his productive capacity unutilized, but our investment in his education is wasted.

"There are valid economic reasons for the United States seeking and enjoying markets in other countries. There are few people who question that any increase in the living standard of the Chinese or the English or those in Greece and Italy will enlarge the demand for American goods and services. There can obviously, therefore, be no valid arguments against the removal of those arbitrary barriers to the expansion of economic opportunity for any groups in our own country now suffering discrimination. The bill to establish a National Commission Against Discrimination in Employment would make a real contribution in this direction with the minimum of confusion, irritation and readjustment."²

Discrimination Breeds Economic and Social Ills

"When discrimination exists and jobs are denied because of race, color, or religion, the minority group affected is forced to a relatively lower economic level. We all know the high cost of city slums, in child mortality, in disease and crime and in delinquent taxes. But studies of recent years have proved beyond a shadow of a doubt that mortality, disease and crime are no higher among Negro slum dwellers than among white slum dwellers. It is the economic degradation, forcing these men, women and children into the slums, that breeds these infectious, festering sore spots upon com-

2. Statement of Leo Cherne, Executive Secretary, Research Institute of America.

munity life. It would be futile to clear slums, if by permitting and abetting discrimination in employment, we doom untold thousands to joblessness and privation which make it impossible for them to buy enough food or to afford a decent home; which leaves them no choice, but to become underprivileged slum dwellers.”³

“In the South, many intelligent citizens are coming to the conclusion that prejudice is the greatest burden of the Southern businessman, cutting down not only the size of his markets but the efficiency of his production as well. Every Southern employer carries on his neck an ‘old man of the sea’ who tells him, when he wants to take on an employee or shift a man from one job to another: ‘You may not pick the man who is best qualified for a particular job if his skin is of the wrong color. You may not put a good white man in this job if the job is traditionally a colored man’s job, and, at the same time, you cannot put a colored man in a white man’s job even if he is twice as efficient and three times as productive as his white competitor for the position.’

“Every Southerner whose eyes are not fastened on the past knows that a new South is arising today, a South of industry and commerce, a South that will once again be a dominant factor in the prosperity of the country and the trade of the world. This new South is throwing off its shackles. It will not accept discriminatory freight rates or any other type of economic discrimination and it cannot allow prejudice or discrimination to stand between its machines, its docks, its ships, its water power, mineral and forest resources, and the men and women who have the capacity to produce goods and services that the nation needs.”⁴

“The Race Problem” is an Economic Problem

“The South has suffered with inferiority. She has been humbly grateful for the crumbs from the North’s table. The average American annual income at the time of Pearl Harbor was \$604. In the South it was \$314. The average Negro income was considerably lower. No plan to cure the South of its ills will succeed which does not make that differential its first order of business. As long as a

3. Testimony of William Green, President, American Federation of Labor.

4. Felix S. Cohen, *Commentary*, March, 1946.

large segment of our population is so far down the economic scale, the South will not thrive.

"The so-called race question is an economic one, not social. Pay the Negro good wages for his work, give him the opportunity to demonstrate his own capacity to learn, work and earn, give him his Constitutional rights and you have solved this distorted so-called race problem."

"Discrimination in employment keeps in motion a vicious circle in our economy. Such discrimination depresses wages for minority groups and, because of desperate competition for jobs by members of these minority groups, discrimination in employment exerts a downward drag on all wages. This, in turn, cuts mass purchasing power, and thereby constricts the market for all goods and services. The circle then begins another round as reduced markets cut production; reduced production cuts employment; reduced employment cuts wages, and, in the absence of effective standards of fair employment, tends to increase and aggravate the very discrimination in employment which set the vicious circle in motion. This is the road of depression, division and disaster."⁶

"Our country must find a way of utilizing its great productivity in peacetime to make a more abundant life for all of us. We have passed into an era where we are more dependent on each other than ever before—an era in which none of us can live comfortably or securely unless all do so—an era in which, therefore, there is no essential conflict between selfishness and altruism. We are beginning to realize that from a most practical point of view we are our brother's keeper."⁷

5. Governor Ellis Arnall, *Colliers*, July 28, 1945.

6. Testimony of A. Philip Randolph, co-Chairman, National Council for a Permanent FEPC.

7. R. E. Gilmor, President, Sperry Gyroscope Company, Inc.

Discrimination Violates our Pledges to American Veterans

Here lie officers and men, Negroes and whites, rich men and poor—together. Here are Protestants, Catholics and Jews—together. Here no man prefers another because of his faith or despises him because of his color. Here there are no quotas of how many from each group are admitted or allowed. Among these men there is no discrimination. No prejudices. No hatred. Theirs is the highest and purest democracy. . . .

To this, then, as our solemn, sacred duty, do we the living now dedicate ourselves: to the right of Protestants, Catholics and Jews, of white men and Negroes alike, to enjoy the democracy for which all of them have here paid the price.

—From burial service at Iwo Jima—Chaplain Roland B. Gittelsohn.

TO MANY a returning minority group veteran, civilian life presents a dismal picture. The things he looked forward to most—a job and a decent place in which to live—are hardest to find. Wartime restrictions against discrimination in training and employment have been removed. Housing—old or new—is almost completely unobtainable.

A survey made by the Army Service Forces, *Postwar Plans of the Soldier*, reveals that most members of the armed forces gave a great deal of thought to their postwar prospects, and many had definite plans for careers after discharge. Japanese-Americans, Mexican Americans, Jewish and Negro GI's looked forward to a future in which it would not be as difficult as before to get an education, find a job, or go into business. They did not expect this to come easily, but they had faith and the hope that America would live up to its promises of equal opportunity for all.

America has made certain guarantees to all veterans alike, regardless of race, religion, color or national origin. Each veteran is advised of these rights as he goes through the separation center. But in his practical ability to take advantage of these guarantees, there is

great inequality. Listen to the testimony of a Southern veteran:

During my six years in the Marines, both in the Caribbean and the Pacific, I saw Negro, Jewish, and foreign-born Americans working side by side with other Marines to preserve a democracy which promises them an equal right with every other American to make a living. But they are now finding that they were fighting for a theory, and that in practice they are facing the same old barriers. For the first time in the history of any country, the youth of all minority groups are being given the opportunity, through the GI Bill of Rights, to develop their capacities and skills by education and on-the-job training. But what a mockery it is to turn educated and skilled young men and women out into a society which will allow them to work only as ditch-diggers, domestic servants, and unskilled laborers of other kinds. On my own campus there are a number of Negro college graduates working as maintenance labor, maids, and waiters.¹

Free Education—for the Accepted

A year's free education for every honorably discharged veteran who served 90 days or more is a basic provision of the GI Bill of Rights. He can, theoretically, choose any approved school and select any course he would like to take, with practically all expenses paid. If he prefers on-the-job training, he can take it and receive the same allowances for tuition and living expenses.

The minority veteran soon discovers that even these advantages do not assure him training. First, he must be acceptable to the school. This requirement alone bars all but a small quota of Jewish, Nisei, and Mexican-American veterans from major institutions, and relegates colored veteran-students to already overcrowded Negro colleges.

Many veterans, unable to wait until the limited quotas set by discriminatory educational institutions can absorb them, or—in the case of Negro veterans—until the limited facilities of the Negro colleges can find room for them, have chosen to pursue on-the-job training instead of formal classroom studies. But here again opportunities are limited for the minority veterans. One of every three veterans

1. Testimony of Clarence Barbour, representing Students for Democratic Action, University of North Carolina.

in the South is a Negro. Yet only one of twelve veterans in the area receiving on-the-job training is colored. Major industries and their affiliated unions jointly sponsor apprenticeships in a variety of crafts. Once again, however, discrimination—whether by the union or the industry—has militated to deny the minority veteran equal access to such training. No Negro veterans are receiving apprentice training as sheetmetal workers, plumbers, electricians or machinists, and the thousands of Negroes who developed skills in these very crafts in the Army and Navy now find themselves virtually barred from the construction industry or relegated to jobs as common laborers or hod carriers.

Many qualified Negro veterans, as well as veterans of Mexican, Filipino, or Japanese-Americans, today face the discouraging truth that their training cannot be profitably utilized because of discriminatory employment practices. These veterans may be skilled workers, doctors, lawyers, or teachers; they may live in communities which have great need of their talents, but their contributions to the community are restricted by the scarcity of employers willing to use their services. There is not much inducement for higher education if members of minority races anxious for education are denied the opportunity to put their knowledge into practice when their schooling has ended.²

Lower Earnings of Minority Veterans

An analysis made by the American Federation of Labor research staff of the official surveys recently conducted by the U.S. Bureau of the Census and the Bureau of Labor Statistics, of the average weekly incomes of Negro and white veterans, shows dramatically the disparity in incomes on the basis of color. In Washington, for instance, there are 84,000 white veterans and 36,000 Negro veterans. The average income of white veterans is 65 per cent above that of the Negro veterans.

This disparity, says the survey, is due to three causes: "(1) many Negroes have been denied employment opportunities in higher grade jobs they are qualified to perform; (2) many Negroes have been barred from both training and job opportunities where they

2. Testimony of Gilbert Harrison, National Vice-Chairman, American Veterans Committee.

could acquire the skill and experience necessary to qualify them for better paid work; and (3) the rates of pay of Negroes doing the same work have often been substantially lower than that of the white workers."

A study by the National Community Relations Advisory Council of the job-seeking experiences of Jewish war veterans in ten cities revealed that 65% of the employment agencies with which they registered required religious identification. Almost half of these veterans were questioned about their religion by the firms to which they applied and an additional 13% expressed the opinion that they were not given fair consideration for available jobs solely because of their religion. The following cases are typical.

A veteran with overseas service in the Pacific: "I put an ad in the paper looking for a position and I got a response. The party asked me whether I was a gentile and when I said 'no', the party hung up."

A New York veteran: "I was recommended for a job with the . . . Plumbing Co. by the Commander of the Amvets. I was told my qualifications were satisfactory but there was no opening. Later the Commander phoned the company and was told they couldn't use me because I was Jewish. All this took place on Brotherhood Week."

It is because of such cases that the American Veterans Committee, the Catholic War Veterans, the Jewish War Veterans, together with various state conventions of the American Legion, have called for the enactment of S. 984. They regard this legislation "as worthy and legitimate payment of a promissory note to millions of our own veterans who took up arms in a conviction that the terrible equality of war would one day be matched by equal opportunities in peace."³

3. Testimony of Colonel Charles Schottland, Executive Director, Jewish War Veterans of the United States.

Discrimination Promotes Industrial Strife

Discrimination in the matter of employment against properly qualified persons because of their race, creed, or color is not only un-American in nature but will lead eventually to industrial strife and unrest. The principle and policy of fair employment practice should be established permanently as a part of our national law.

—President Harry S. Truman—from a letter to Congressman Sabath, June 19, 1945.

"THE INSTINCT to live in human beings, regardless of race or color, religion or national origin, is so strong that they fight for the right to work in order to live."¹

It is in recognition of this fundamental truth that organized labor has rallied so strongly in support of S. 984 "The existence of depressed wage standards based on race are a threat to the wage standards of all workers. Moreover, because the minority workers are forced to accept a lower pay standard for the same work in order to sustain their livelihood, friction and resentment are bred on the part of workers whose rates of compensation are thereby put in jeopardy. That is the economic source of racial tension which constantly threatens communities in which discrimination in employment prevails. Whenever unemployment begins to increase such tension is bound to become highly explosive, leading to unrest and even rioting. These are the inevitable consequences of discrimination."²

"Fundamentally, black and white workers do not fight each other because they hate each other, but they hate each other because they fight each other."³

Pit race against race, religion against religion, native born against foreign born—that is the formula that led to international war. It is a formula that breeds industrial anarchy. "It is well known that racial and religious frictions have an adverse effect upon industry.

1. Testimony of A. Philip Randolph, co-Chairman, National Council for a Permanent FEPC.
2. Testimony of William Green, President, American Federation of Labor.
3. Testimony of A. Philip Randolph.

The practice of discrimination in employment, aimed at by the act, has a strong tendency to keep alive antagonisms that would be ameliorated if the restrictive practice disappeared."⁴ By outlawing job qualifications and wage differentials based on creed or color, FEPC would minimize racial economic competition and the fear and hatred which it engenders.

"Prejudice is Born of Ignorance"

"Unless the beneficent law of cooperation is an illusion, unless the teachings of religion are false, and unless the principles of democracy are a rhetorical hoax, prejudice is born of ignorance and lives only by isolation. Working with each other is a quicker anti-toxin for the poison of prejudice than preaching at each other."

Day to day contacts between members of different racial, religious, and nationality groups in employment is the best possible device for building mutual understanding, respect and goodwill. This was forcibly demonstrated during the tragic Detroit race riot in 1943. In his report to the President on that shameful incident, Attorney General Francis Biddle declared, "It is extremely interesting that there was no disorder within plants, where colored and white men worked side by side."

"The UAW-CIO through the practice of democracy in the shop and in the union halls, had created an oasis of sanity in a city gone mad with frustration, bitterness, bigotry and brutality. That the oasis was so pitifully small was proof only that the most determined action of the union to eliminate discrimination and to achieve fair practices was bound to fall short of unqualified success for the simple reason that one institution was contending with the manifold aspects of a problem too great to be solved by anything less than vigorous community action, both educational and legislative."⁶

Few industries have enjoyed such stable industrial relations as has the garment industry. The membership of the union, "scattered through some 34 States, is made up of a cross section of almost every national, racial, and religious group in the United States. Workers

4. Testimony of Ben Herzberg, Chairman, Legal Committee, American Jewish Committee.

5. Testimony of Hon. Charles H. Tuttle in support of Ives-Quinn Bill, Albany, N. Y., February 20, 1945.

6. Testimony of Walter P. Reuther, President, United Automobile Workers, CIO.

and employers of different color, different creed, different national ancestry have worked together side by side in harmony. Within our union and industry we do not and never have practiced any kind of discrimination either with regard to membership in the union or employment in shops under agreement with our union. This policy is to a considerable extent responsible for the proud record of industrial peace which we have achieved in our industry.”⁷

Discrimination Creates Resentments

“To deny to any group of citizens the opportunity to employ to the full their productive skills and thus to confine them in an economic ghetto must of necessity create resentments which provide a fruitful field, in which proponents of alien philosophies may work.”⁸

“Where during the depression of the thirties many Negroes, in despair of their ever participating in the democracy they heard so much about but seldom experienced, listened with increasing interest to those who advocated a different form of government than ours, they lost interest in such doctrines when (as a result of the war-time FEPC) they found reason to believe that at last they would be permitted to share the fruits as well as the burdens of democracy. Failure of the Congress to enact legislation against employment discrimination will place directly upon the Congress responsibility for re-creation of such dangerous despair.”⁹

“If this battle fails here, it cannot be undertaken elsewhere. The verdict will be that racial and religious discrimination is too thoroughly established in our economy to be outlawed. We will inoculate millions of our fellow-citizens with the disillusion, cynicism and hopelessness which are fertile fields for alien ideologies and false messiahs at home and abroad. We will find ourselves up against the impossible task of trying to balance the books of social injustice with other than red ink.”¹⁰

7. Statement of Frederick F. Umhey, Executive Secretary, International Ladies' Garment Workers' Union.

8. Testimony of Henry C. Turner, former Chairman, New York State Commission Against Discrimination.

9. Testimony of Roy Wilkins, Assistant Executive Secretary, National Association for the Advancement of Colored People.

10. Charles H. Tuttle, *op. cit.*

From the Nation's Press

CHICAGO (Ill.) *Sun*—

"Racial discrimination, like social security, fair labor standards, and minimum wages, is a national problem. It must be dealt with nationally. Shall America confess that fair employment practices are possible only in time of labor scarcity? Shall we give up the ground so far gained when the war ends? Congress can answer 'No' by establishing the FEPC on a permanent basis."

DETROIT (Mich.) *Free Press*—

"... The denial of economic equality to 13,000,000 American citizens because of their color violates every concept of justice.

"Congress should put FEPC on a permanent basis and give it enough money effectively to discharge its duties."

DURHAM (N. C.) *Carolina Times*—

... No man or groups of men fit to be in the Congress of the United States would oppose such a piece of legislation unless deep down in their hearts they wanted the right, under the protection of the law, to force economic bondage upon a particular minority of this country."

DES MOINES (Iowa) *Tribune*—

"... The FEPC should be made permanent."

GREAT FALLS (Mont.) *Tribune*—

"... to give fair play to minority groups only during a war would be a mean kind of exploitation. ... Let's continue it after the war. It is one of the brightest stars in the banner of victory."

KANSAS CITY (Mo.) *Times*—

"... it (FEPC) served a justified purpose in wartime and its work will be even more necessary in the postwar adjustment era."

MILWAUKEE (Wis.) *Journal*—

"... the Committee on Fair Employment Practices should be made permanent, as is proposed in Congress."

NEW YORK (N. Y.) *Herald Tribune*—

"... FEPC should be legitimized and given permanent status by the Congress ... the legislation is of too great importance just now, not only nationally but in its effect on world councils, to admit of politics or prejudices as usual."

PHILADELPHIA (Pa.) *Inquirer*—

"To deprive anyone of his livelihood or to bar him from job opportunities because of his race, his religious belief, his color, or his national origin is not only unfair, it is un-American."

PITTSBURGH (Pa.) *Post-Gazette*—

"Taking due note of the whole spirit of our democratic laws, it is hard to see how any Member of Congress can argue that fair employment practices are either unconstitutional or un-American. To say that our Government can draft Negroes to fight with white men for their common safety and security but cannot insist that Negroes as well as white men be used in maintaining maximum production on the home front is splitting hairs too thin for logic."

ST. PAUL (Minn.) *Dispatch*—

"Maintenance of fair practices in industrial employment ought to be one of those unarguable things, like goodness and love of family."

ST. LOUIS (Mo.) *Post-Dispatch*—

". . . The only political issue involved is whether a great democracy will blink at or try to stamp out discrimination, a crime for which we have indicted Nazi Germany."

SALISBURY (N. C.) *Post*—

". . . If opportunity can be denied to any group, for reasons of color, religion, or national origin, no minority group's rights are safe. The principle of equal opportunity is not divisible. It ceases to exist if all do not have it."

TERRE HAUTE (Ind.) *Star*—

"Either one is for democracy at any price, or one does not really believe in it at all. If one believes in it then one must fight for it. One way of fighting for it is to extend economic democracy. One way to extend economic democracy is to see that a permanent FEPC is set up without delay."

WASHINGTON (D.C.) *Post*—

". . . It is time for the Government of the United States to go unequivocally on record in support of the doctrine that all Americans have an equal right to jobs."

2

Origin, History and Effectiveness of FEPC

The President's Committee on Fair Employment Practice

Equality of job opportunity permits a man to make a place for himself according to his skill. America was reared on the supposition that no barriers to a livelihood exist except a man's own inability.

Prior to World War II this concept was never backed by law; in part because the majority of Americans never felt the need for protection of job opportunity, in part because of unchallenged habits of assigning low-paid, heavy work to such groups as Negroes and Mexican-Americans.

The first national step to make equal job opportunity a protected right was taken six months before Pearl Harbor. National self-preservation inspired it. The blitzkrieg had demonstrated the importance of mass production of war materials. Our period of national defense might at any moment change to a state of war. A Social Security Board survey of American manpower needs showed that discriminatory hiring habits squarely barred the entrance of millions of minority group Americans into the factories and shipyards where productive skills were about to begin their race against the destruction of American lives and property. As a result,

Special letters and instructions were issued by various Government officials during the next six months. For example, in January, 1941, the Administrator of the Federal Works Agency established a regulation prohibiting discrimination in employment in the construction of defense housing projects. In a memorandum on June 12, 1941, to the OPM, President Roosevelt said, 'No nation combating the increasing threat of totalitarianism can afford arbitrarily to exclude huge segments of its population from its defense industries. *Even more important is it for us to strengthen our unity and morale by refuting at home the very theories which we are fighting abroad.*'

On June 25, 1941, in response to growing protest that the steps taken had not proved adequate, the President issued Executive Order 8802 and appointed the Committee on Fair Employment Practice, to enforce it.¹

Executive Order No. 8802

(In Part)

Whereas it is the policy of the United States to encourage full participation in the national defense program by all citizens of the United States, regardless of race, creed, color, or national origin, in the firm belief that *the democratic way of life within the Nation can be defended successfully only with the help and support of all groups within its borders*; and

Whereas there is evidence that available and needed workers have been barred from employment in industries engaged in defense production solely because of consideration of race, creed, color or national origin, to the detriment of workers' morale and of national unity;

Now, therefore, by virtue of the authority vested in me by the Constitution and the statutes, and as a prerequisite to the successful conduct of our national defense production effort, I do hereby reaffirm the policy of the United States that *there shall be no discrimination in the employment of workers in defense industries or government because of race, creed, color or national origin*, and I do hereby declare that it is the duty of employers and of labor organizations, in furtherance of said policy and of this order, to provide for the full and equitable participation of all workers in defense industries, without discrimination because of race, creed, color or national origin.

According to Executive Order 8802, the Committee on Fair Employment Practice was to "receive and investigate complaints of discrimination in violation of the provisions of this order and . . . take appropriate steps to redress grievances which it finds to be valid."

From its very inception the Committee encountered obstacles beyond those attendant on any new agency. It soon became the target of powerful forces—forces which preferred to place our production

1. The Committee on Fair Employment Practice, *FEPC—How It Operates*, 19pp., U.S. Government Printing Office, 1944.

program in jeopardy rather than abide by the provisions of the Executive Order.

With the twin handicaps of an infinitesimal budget and a staff which at the maximum consisted of but 13 professional workers, the Committee was confronted by one crisis after another. When the hearings which had been scheduled on discrimination in the railroad industry were suddenly postponed without explanation, it became apparent that a complete reorganization was necessary if the Committee was to carry out its mandate. As the result of pressure from liberal organizations throughout the country, Executive Order 9346 was issued on May 27, 1943, setting up the Committee as an independent agency in the Executive Office of the President, with a full-time salaried chairman and six other members serving without compensation.

Monsignor Francis J. Haas, formerly Dean of the School of Social Sciences at Catholic University, now Bishop of Grand Rapids, was appointed chairman and director. To serve with him as unpaid members of the body President Roosevelt appointed John Brophy (Director of Industrial Union Councils, CIO), Samuel Zemurray (President, American Fruit Company), P. B. Young (Publisher, *Norfolk Journal and Guide*), Sara E. Southall (International Harvester Corporation), Boris Shishkin (Economist, AFL), and Milton P. Webster (Vice President, Brotherhood of Sleeping Car Porters). Mr. Young was later succeeded by Attorney Charles H. Houston, Monsignor Haas by Malcolm Ross, and Mr. Zemurray by Charles H. Horn of Federal Cartridge Corporation.

The new Executive Order enlarged upon 8802 while repeating its basic principles.

The stated purposes of the order were "to promote the fullest utilization of all available manpower, and to eliminate discriminatory employment practices." The committee was ordered to formulate policies to achieve these purposes.

In addition, Executive Order 9346 expressly ordered:

(1) All contracting agencies of the Government to include in all contracts and in all subcontracts negotiated or renegotiated a provision obligating the contractor not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin (par. 1).

(2) All departments and agencies of the Government concerned

with vocational and training programs for war production to take all measures appropriate to assure that such programs are administered without discrimination because of race, creed, color or national origin (par. 2).

The National War Agencies Appropriations Act, 1946, approved by Congress on July 17, 1945, included a \$250,000 appropriation for the Committee on Fair Employment Practice. The act provided that this sum be used "for completely terminating the functions and duties of the Committee . . ." and provided further, "That if and until the Committee . . . is continued by an Act of Congress the amount named . . . may be used for its continued operation until an additional appropriation shall have been provided."

The occurrence of V-J Day less than a month later, followed by the wholesale cancellation of war contracts, raised questions concerning the Committee's jurisdiction over private industry reconverting to peacetime production. The Committee immediately sought clarification of its responsibilities in industrial reconversion while holding that its authority to eliminate discrimination in government employment and in the performance of government contracts remained unimpaired.

On December 20, 1945, President Truman issued Executive Order 9664, continuing the Committee's work under "the duties and responsibilities" of the previous executive orders and "for the period and subject to the conditions" stated in its appropriation. In addition, the Committee was empowered to "investigate, make findings and recommendations, and report to the President with respect to discrimination in industries engaged in work contributing to the production of military supplies or to the effective transition to a peacetime economy."

The Committee's decreased appropriation necessitated two early cuts in staff, one in August and another in December, 1945. These two cuts reduced the total personnel to 31 out of a previous total of 128 persons. In addition, as of that date, all field offices except those in Detroit, Chicago, and St. Louis had been closed. Further cuts followed in March; and on May 3, it became necessary to put all employees on leave without pay status. Except for volunteer work, active operation ceased on that date. The Committee, however, remained in being through June 28. (Final Report, Fair Employment Practice Committee, U.S. Government Printing Office, 1947)

Effectiveness of FEPC

"The degree of effectiveness which the Fair Employment Practice Committee was able to attain has shown once and for all that it is possible to equalize job opportunity by governmental action, and thus eventually to eliminate the influence of prejudice in the field of employment."

—President Harry S. Truman, June 28, 1946.

FEDERAL

During the war years, Jews, Negroes and members of other minorities gained a foothold in industries and occupations which previously had been barred to them. Although the acute manpower shortage set the stage for these gains, they were in large measure directly attributable to the work of the FEPC.

In the three years following the issuance of Executive Order 9346, the Committee docketed some 8,000 cases. For those who seem to believe that employment discrimination is primarily a Southern problem, it is interesting to note that the largest proportion of cases originated in the industrialized East; the Midwest and Far West together came second; the South last.

FEPC gave recourse of appeal to all minority group war workers who had real or supposed grievances. The fact that the worker had the chance to present his story to his government was in itself a safety valve for bottled-up resentment. That FEPC carefully screened its cases was shown by the dismissal of two-thirds of all the cases brought to it. In this sifting process there were some 800 employers who never knew they had been charged with discrimination, since FEPC, without notice to them, persuaded the complainants that they did not have valid cases or that FEPC lacked jurisdiction.

During its most active 2 years, FEPC closed an average of 250 cases each month. In each of these months about 100 cases were closed as having been satisfactorily adjusted. Some war-plant gates were thereby opened to minorities hitherto refused admittance. Government and industry were persuaded to advance many minority workers to their established skills. Members of religious sects were

permitted to celebrate holy days under arrangements that they would make up the lost war work. A number of newspapers were persuaded to discontinue discriminatory want ads. Many worker groups withdrew their objections to working side by side with minority group members.

The effect of these cases on the morale of minority group workers is not precisely measurable. That it was far-reaching was shown during the war by the minimum of interracial friction. Vociferous threats to strike if minorities entered a plant evaporated when responsible unions and employers took a firm position against discrimination. Hundreds of such instances disprove in fact the assumptions of the inexperienced that "It can't be done." During the 18-month period covering the last 6 months of 1943 and all of 1944, strikes over racial issues cost only 1.7 per cent of the total man-days lost through all strikes.

FEPC Helped Win the War

There is full evidence that the wartime national policy of non-discrimination contributed much to the shortening of the war.

The great war worker recruiting services, such as the War Manpower Commission and the War Shipping Administration, were constrained by Executive Order to eliminate discrimination. The War and Navy Departments, employers of more than a million industrial war workers, were bound to protect equal job opportunity. The Federal Government was obligated to be a model employer. A non-discrimination clause was in every war contract. This did not deter many officials in the vast wartime Government service from attempting to discriminate, as evidenced by the fact that 25 per cent of FEPC's case load came from Government sources. Nevertheless, the fact that the national policy was firm, and that agency heads were committed to it, created an atmosphere in which minority group members made great gains both in numbers and in grades of jobs.

The thousands of cases which FEPC settled in the field were seldom known to the public, because FEPC itself refused to give to the press any charges which later might prove invalid or possible of settlement. Because formal cases did go to public hearing and were fully reported, the public, ignorant of the informal settle-

ments, deduced from the few open hearings that FEPC invariably met with strong resistance or open defiance. This was not the truth.

Hundreds of FEPC charges were satisfactorily adjusted to every one which reached the public hearing stage. FEPC constantly applied persuasion as its best working tool and during its past 5 years satisfactorily settled nearly 5,000 cases by peaceful negotiation.

That is not to say that persuasion alone can end discrimination. The employer's need for war workers, or his patriotism, or dislike of exposure, each in its respective situation was a powerful incentive to stop discrimination. The practice, however, seldom disappeared spontaneously. The intervention of a third party, with authority to act if necessary, was required to start the process in motion.

Persuasion Alone Is Inadequate

The effective limits of persuasion appeared in the outstanding cases which FEPC never was able to settle. Relatively few in number, these employers and unions which successfully defied the national policy of non-discrimination proved that persuasion must be backed by legislative authority if conformity with the policy is to be realized.

Case statistics, however, provide but a fragmentary picture of the gains that were achieved. They fail to take into account the qualitative gains that were made in terms of upgrading and training, in terms of classification to higher categories of skill and pay, in terms of enabling workers to advance on a job in accordance with their ability. Nor do statistics reflect the direct gains that were made in terms of the very many firms which never were involved in negotiations with the FEPC but which altered their discriminatory employment policies in order to comply with the declaration of public policy contained in the Executive Order. Above all, statistics provide no measure of FEPC's contribution to national morale and unity, of the contribution its mere existence made in revitalizing the faith of millions of Americans in the democratic ideal.

When it is considered that the FEPC had no enforcement powers, that its annual budget was less than the hourly budget of many a war agency, and that the entire case load was handled by a staff of 36 examiners, the record proves conclusively, if proof be needed, that the authority of government can succeed in bringing an end to the blight of employment discrimination.

STATE

On March 12, 1945, Governor Thomas E. Dewey affixed his signature to the New York Law Against Discrimination, more popularly known as the Ives-Quinn Act,¹ thus making New York the first state to adopt a peacetime FEPC. In describing the Act, Governor Dewey declared, "It translates into law what is inherent in our Constitution, and is the very essence of our free society."²

In its essential provisions the Ives-Quinn Act bears a striking similarity to Senate Bill S. 984. It condemns discrimination in employment because of race, creed, color or national origin as endangering the welfare of the state, and declares the right to employment without such discrimination to be a civil right.

It creates a commission of five members, with powers which generally coincide with the powers proposed to be conferred upon the Commission under Senate Bill S. 984, section 6(g).

The definitions of unfair employment practices include in almost equivalent terms the definitions found in section 5(a) subdivision (1), (b) and (c) of Senate Bill S. 984.

The procedures set up under the New York State Law are generally similar to those in Senate Bill S. 984. The complaint must be verified by the aggrieved person or his attorney-at-law. When received, the complaint is referred to a Commissioner, who is charged with the duty of investigation, in which he may have the assistance of the Commission staff. If as a result of the investigation he finds probable cause to credit the allegations of the complaint, the Investigating Commissioner is charged with the duty of endeavoring to eliminate the unlawful practice by conference, conciliation and persuasion. What may transpire during such endeavors may not be disclosed. In case of failure to eliminate the unlawful practice, the Investigating Commissioner is required to notice the matter for hearing before three members of the Commission (other than the Investigating Commissioner). Testimony is taken under oath and on the complete record the Commission is required to state its findings and to make an order, either dismissing the complaint or requiring the respondent to cease and desist from the unlawful prac-

1. N. Y. Laws 1945, c.118.

2. Address over Columbia Broadcasting System, May 4, 1945.

tice and to take such affirmative action as in the judgment of the Commission will effectuate the purposes of the statute.

The New York Law contains provisions similar to those contained in Section 8 of Senate Bill S. 984 in aid of enforcement of the Commission's order or for the review of the Commission's action by a person claiming to be aggrieved by its order.

Since the passage of the Ives-Quinn Act, six other states have enacted FEPC laws. The laws of New Jersey,³ Massachusetts,⁴ and Connecticut⁵ are modeled on and are very similar to the New York statute; those in Indiana,⁶ Wisconsin⁷ and Oregon⁸ however, are merely investigatory statutes and, while they declare discrimination in employment to be contrary to public policy, they contain no enforcement provisions.

Prior to the passage of these laws, horrendous tales were heard to the effect that business would leave the state, white employees would quit their jobs and employers would be harassed with indiscriminate charges. All of these predictions have proved to be utterly groundless.

The chairmen of the New York, New Jersey and Massachusetts Commissions, the three states with the longest experience with FEPC laws, testified before the Senate Labor and Public Welfare Committee at the hearings on S. 984.

All reported that there had not been a single instance of a business leaving the state, of a mass walkout, or of a complaint by any employer that compliance with the law had resulted in a loss of either customers or revenue. On the contrary, they testified that an increasing number of concerns had come to the conclusion that FEPC laws help business by promoting a more efficient utilization of labor. As one executive put it, "Some of the new people I've hired are outstanding. You ought to point out to employers the benefits they get from an increased labor market, where they have access to so many qualified workers." Moreover, the representatives

3. N. J. Laws 1945, c.169.

4. Mass. Laws 1946, c.368.

5. Connecticut Laws 1947, Public Act 171.

6. Ind. Laws 1945, c.325.

7. Wisc. Laws 1945, c.490.

8. Oregon Laws 1947, c.508.

from New York, New Jersey and Massachusetts were unanimous in declaring that the FEPC laws in their respective states had resulted in a marked decline in discriminatory practices and in the virtual elimination of discriminatory advertisements and employment application forms. They were unanimous, too, in the opinion that enactment of an effective federal statute would strengthen and facilitate the administration of their own laws.

Altogether these three Commissions reported a total of 1226 cases. In not a single case, was it necessary to go beyond the processes of "conferences, conciliation and persuasion" to effect a satisfactory adjustment. Again the Commissioners were unanimous, however in emphasizing that although no state had found it necessary to invoke legal sanctions, "the very fact that it is part of the procedure has had its effect and helped make possible the really remarkable record of cases settled through conciliation alone."⁹ As one Commissioner put it, "You have no impulse to accept the conciliation efforts unless there is in the background somewhere the possibility that . . . sanctions may be imposed, or the authority of the courts called upon . . . I do not mean to imply that the conference proceeded under duress . . . but there was always the possibility of that alternative which rendered the respondent more willing to sit down and realize he had to make certain concessions."¹⁰

Although the number of complaints reported was relatively small, it was pointed out that the "ramifications of one well-settled case are amazing." Thus, for example, a case was cited involving a company employing 30,000 people in the State of New Jersey. "The satisfactory adjustment of that one complaint" it was reported, "has led to at least one thousand new job opportunities for members of minority groups."¹¹

Moreover, the Commissioners were emphatic in declaring that complaints are only a "minor phase" in determining the effectiveness of an FEPC statute.

The objective of FEPC, they pointed out, is not to build case loads

9. Testimony of Mildred Mahoney, Chairman, Mass. FEPC.

10. Testimony of Henry C. Turner, Chairman, New York State Commission Against Discrimination.

11. Testimony of Joseph L. Bustard, Asst. Commissioner of Education, State of New Jersey.

but to reduce discrimination. The number of firms who voluntarily change their employment policies to conform to the provisions of the law, therefore, is far more significant than the number of complaints handled. The following quotation is from the testimony of Joseph Bustard of the New Jersey Commission. It reflects, however, the testimony of New York and Massachusetts as well.

"With the enactment of the New Jersey law many concerns and corporations broadened their employment policies to include minorities who had been neglected for no other reason than indifference or thoughtlessness. Others who had employed minorities in limited capacities inaugurated programs of upgrading with merit as the sole consideration. Still others appealed to the division to assist in analyzing employee reaction and to advise the concern as to methods of selection and induction of minority workers. It was the natural expression of the majority wishing to live within the law and of others finding that the law enabled and supported them in initiating that which they had desired but had feared to do."¹²

MUNICIPAL

Coincident with the movements for fair employment practice legislation on the federal and state levels, there has been increasing discussion of the desirability of municipal action as a further aid in the fight against employment discrimination.

In August, 1945, Chicago became the first city to enact an ordinance on the subject; with Milwaukee and, more recently, Minneapolis following suit. Similar ordinances have been proposed or introduced in Buffalo, Philadelphia, St. Louis, Cincinnati, Detroit, Cleveland, Seattle, Los Angeles, Toledo, Spokane, San Diego and Indianapolis.

The Chicago and Milwaukee ordinances leave enforcement to the injured individual or to the cities' prosecuting authorities and, like state civil rights laws with similar provisions, have proved relatively ineffective.

The Minneapolis ordinance, on the other hand, establishes a five man commission with power to investigate and adjust complaints.

12. *Ibid.*

Within two months after the commission had taken office, Mayor Hubert Humphrey reported "positive evidence of the value of this legislation in overcoming discrimination in employment. Even before the commission established an office," he testified, "a number of inquiries were received from leading employers and union officials as to the steps they should take to bring their practices into full compliance with the provisions of the ordinance. . . . The law gives employers the opportunity to shift to the City Government the burden of meeting whatever opposition may present itself against a policy of non-discrimination in employment. That is a responsibility that I, and the members of the commission, are glad to assume."¹³

Despite his emphatic endorsement of the gains achieved under the Minneapolis ordinance, Mayor Humphrey was no less emphatic in stating that "local action can never be sufficient nor adequate to solve this serious national problem. Federal legislation should set the basic national pattern, and local laws may be enacted to apply this pattern to groups of employers, labor organizations and workers which cannot be appropriately covered by national legislation."¹⁴

13. Testimony of Hubert H. Humphrey.

14. *Ibid.*

Legislative History of FEPC

In the spring of 1944, identical bills to establish a permanent FEPC were introduced into the House of Representatives of the 78th Congress by Representatives Thomas E. Scanlon (H.R. 3986), William Dawson (H.R. 4004), and Charles LaFollette (H.R. 4005). Hearings on these bills were held by the House Committee on Labor, which reported the bills favorably. No further action was taken, however, and the bills expired at the termination of the 78th Congress.

On June 23, 1944, a companion bill creating a permanent FEPC (S. 2048) was introduced into the Senate of the 78th Congress by Senator Dennis Chavez on behalf of himself and Senators Downey, James. E. Murray, Robert F. Wagner, William Langer, and Arthur Capper. The bill was referred to the Senate Committee on Education and Labor which appointed a Subcommittee chaired by Senator Chavez to consider the bill. Hearings were held late in August and early in September, 1944 (transcript available). Although the bill was favorably reported, no action was taken by the Senate before the expiration of the 78th Congress.

Thirteen bills creating a permanent FEPC were introduced into the House at the beginning of the 79th Congress. These bills were considered, without further hearings, by a subcommittee of the House Committee on Labor which recommended to the full committee a bill embodying the best features of all of the proposals. Upon completion of comprehensive discussion by the full committee, it requested Mrs. Norton on February 20, 1945, as chairman of the Committee on Labor, to introduce H.R. 2232 as a committee bill. (The report of this Committee is obtainable as Report No. 187 of the House Committee on Labor.)

The bill was then referred to the House Committee on Rules, which for a period of over three months resorted to every known device to avoid taking a stand on the measure. On June 12, 1945, following pressure by President Truman, the issue of reporting the bill for debate was brought to a vote. Since a tie (6-6) resulted, the bill remained in Committee. Representative Sabath, chairman of the Rules Committee, in commenting on the situation, said on

July 6, "The Committee on Rules was not created for the purpose of delaying or depriving the Members of the House of the right to vote upon important legislation, but it was created for the purpose of properly expediting proposed legislation under the rules and to give the membership of the House a proper opportunity to vote on a proposal. Unfortunately, in the instant case this right and privilege has been denied to the Members of the House . . . I always have felt and feel now, that a rule should have been granted, that the House should have been given an opportunity to vote upon this proposed legislation." After all efforts to dislodge the bill from Committee had failed, a discharge petition was initiated which failed to secure the 218 signatures necessary to bring the bill on to the floor.

Parliamentary Maneuvers Blocked Consideration

Mrs. Norton then resorted to the parliamentary device, the rule of Calendar Wednesday. On Tuesday, September 25, when the customary request to suspend the next day's Calendar Wednesday was made, she objected. On Wednesday, September 26, however, within 15 minutes after the session began, Mr. Whittington, of Mississippi, moved the adjournment of the House, and it carried by a vote of 74 to 31, thus ending the calendar and legislative day. Later efforts were similarly unsuccessful.

On January 6, 1945, Senator Chavez on behalf of himself and Senators Downey, Murray, Wagner, Aiken, Capper, and Langer, introduced S. 101, which with minor changes was the same as the Norton Bill in the House. On February 4, 1945, Senator Taft introduced S. 459 which differed from S. 101 chiefly in that it did not provide for any judicial enforcement or judicial review. Both bills were referred to a subcommittee of the Senate Committee on Education and Labor. After full hearings, the subcommittee, by unanimous vote, and the full committee by a vote of 12-6, reported favorably on S. 101.

"On January 17, 1946, during the Senate morning hour and after the routine morning business had been dispensed with, Mr. Chavez moved that the Senate proceed to the consideration of S. 101. Upon a roll-call vote, his motion was carried 49 to 17. Mr. Chavez then began to discuss his bill. Later on, at approximately 3:45 p.m., Mr. McKellar moved the adjournment of the Senate, which motion was adopted by a voice vote.

"The following day, when the Senate convened, following the routine prayer of the Chaplain, Mr. Barkley, the majority leader, moved that the Journal of the prior day's proceedings be approved without reading. Mr. Overton objected and then moved to correct the Journal to include therein the prayer delivered by the Chaplain on the preceding day. The correction of the Journal and the appeal from a ruling of the Chair on a point of order—whether the correction of the Journal or the consideration of S. 101 was the pending business—remained the business before the Senate until February 7, 1946, when Mr. Barkley withdrew his appeal from the Chair, the motion to correct the Journal of January 17 was withdrawn, and Mr. Barkley moved approval of the Journal, which was approved by unanimous consent. S. 101 then became the unfinished business of the Senate.

"A cloture petition with 48 signatures was then filed by Mr. Barkley. On Saturday, February 9, the vote on cloture was taken. The vote was 48 to 36, and lacking the necessary two-thirds, the cloture rule was not invoked. Mr. Chavez then moved to displace S. 101 in favor of an appropriation measure. His motion was adopted 72 to 12, and S. 101 was restored to the calendar, where it remained until the Seventy-ninth Congress adjourned."¹

80th Congress

On March 27, 1947 Senator Irving Ives (R-N.Y.) introduced S. 984 for himself and Senators Saltonstall (R-Mass.), Smith (R-N.J.), Morse (R-Ore.), Chavez (D-N.M.), Downey (D-Calif.), Murray (D-Mont.), and Myers (D-Pa.). Companion identical bills were introduced in the House by Reps. Fulton (R-Pa.) H.R. 2824, Norton (D-N.J.) H.R. 2820, Douglas (D-Calif.) H.R. 2877, Dawson (D-Ill.) H.R. 2902, Javits (R-N.Y.) H.R. 3034, Powell (D-N.Y.) H.R. 3105, Judd (R-Minn.) H.R. 3273, Bender (R-Ohio) H.R. 3316 and others.

In the House, the Committee on Education and Labor to which the bill was referred, failed to schedule hearings and took no action.

In the Senate, the Committee on Labor and Public Welfare called hearings on S. 984 before a subcommittee consisting of Senators Donnell (R-Mo.), Ives, Smith, Ellender and Murray. Although the hearings were originally scheduled to terminate on June 20, at the

1. 93 *Congressional Record* (March 28, 1947), p. 2881.

request of Senator Ellender, they were extended until July 18, only nine days before Congress adjourned.

During the course of the hearings, Senator Smith advanced "for discussion purposes" a proposal to allow individual states, by legislative action, to suspend operation of the enforcement provisions of the bill within their borders. Opposition to this proposal was voiced by practically every witness whom Sen. Smith questioned. Nevertheless, Senator Smith failed to support the motion of his co-sponsors, Senators Ives and Murray, to report the bill favorably from the subcommittee to the full Labor and Public Welfare Committee. Instead, he offered a substitute motion endorsing the "general purposes" of the bill but recommending "further study" of its provisions.

This motion, adopted by the subcommittee, was accepted by the full committee which announced that it would hold the bill until January when it would consider amendments by Committee members. No further action had been taken when the first session of the 80th Congress ended.

3

Analysis of Pending FEPC Legislation

Digest of Pending Bills:

S. 984 — H.R. 2824

SUMMARY OF PROVISIONS¹

1. *Practices prohibited:* The bill forbids discrimination in hiring, firing, or conditions of employment because of race, religion, color, national origin, or ancestry by an employer of 50 or more engaged in interstate commerce and also forbids him to utilize any employment agency or other placement service which discriminates—section 5a. The bill forbids a labor organization having 50 members in the employ of one or more subject to the act to discriminate against any individual or to segregate or limit its membership in any way which adversely affects his employment opportunities—section 5b. The bill forbids employers and labor organizations to discriminate against any person for having opposed an unlawful employment practice.

2. *Exemptions:* The bill exempts State or municipal—but not Federal—agencies as well as nonprofit religious, charitable, fraternal, social, and educational associations, other than labor organizations—section 4.

3. *Who enforces act:* The bill creates a National Commission Against Discrimination in Employment composed of seven members at an annual salary of \$10,000 each, appointed by the President with the advice and consent of the Senate for overlapping 7-year terms—section 6.

4. *Powers of Commission:* The bill authorizes the Commission to investigate charges, attempt to eliminate discrimination by conference, conciliation, and persuasion, issue complaints, hold hearings, subpoena witnesses, make findings of fact, issue cease-and-desist orders, order reinstatement or hiring, with or without back pay, and seek enforcement of its orders in court—section 7.

5. *Sanctions:* Violation of a court-enforced order of the Commission may be punishable as a contempt of court—section 8. Wilful

1. 93 *Congressional Record* A2698 (May 29, 1947). Remarks of Hon. James C. Fulton. (Reprints available from National Council for a Permanent FEPC.)

resistance to Commission representatives is a misdemeanor—section 14—punishable by a fine of not more than \$500 and/or imprisonment for not more than 1 year.

6. *Administrative procedure:* Charges may be filed by or on behalf of an aggrieved person or by any member of the Commission. The commissioner who filed a charge shall not participate in a hearing or trial thereof. Three members of the Commission hear the parties argue the case, after hearing, but the entire Commission—three members constituting a quorum—must decide it. Procedure is in conformity with the Administrative Procedure Act—section 7 and section 8.

7. *Judicial review:* Review is had in circuit court of appeals in accordance with the Administrative Procedure Act. An order may be set aside if arbitrary or capricious or not supported by substantial evidence—section 8.

8. *Government agencies and Government contracts:* Commission orders against a Federal agency may be enforced by the President and not by the courts. The President may also issue regulations to prevent unlawful employment practices on any Federal contract employing 50 or more persons. Such regulations are enforced by the Commission—section 10.

9. *Notices:* Every employer or union subject to act must post notices about act approved by Commission; a wilful failure to post is punishable by a fine of from \$100 to \$500—section 11.

10. *Other provisions:*

(a) The act is to be known as the “National Act Against Discrimination in Employment”—section 1.

(b) The declaration of policy cites the constitutional and moral justifications for the act, including the Charter of the United Nations. The right to employment without discrimination is made a Federal civil right—section 2.

(c) A trial examiner who presides at a Commission hearing must be a resident of the Federal judicial circuit in which the alleged unlawful practice took place—section 6f.

(d) At the request of an employer whose employees refuse to

cooperate with the act, the Commission may offer remedial action—section 6g.

(e) The Commission may create State or regional advisory or conciliation councils and may empower them to study the problem or specific instances of discrimination in employment—section 6g.

(f) Complaints must be filed within 1 year after discrimination has been committed—section 7h.

(g) The act does not affect in any way veterans' preferences laws—section 12.

(h) Regulations of the Commission may be set aside by a concurrent resolution of both Houses of Congress—section 13.

Comparison Between Pending and Previous Bills

Prior to drafting the pending FEPC bills (S. 984, H.R. 2824), all previous bills and proposed amendments were carefully reviewed and a conscientious effort was made to incorporate those suggestions which would satisfy critics of FEPC without impairing the essentials of an effective bill. The current legislation thus embodies many of the recommendations made during Congressional hearings and debate, as well as provisions that have proved helpful in the successful administration of state FEPC laws.

The chart on pages 57 to 61 illustrates the chief points of difference between S. 984 (Ives Bill, 80th Congress) and S. 101 (Chavez Bill, 79th Congress).

"By limiting its coverage to employers of 50 or more, S. 984 answers those critics who argued that former bills were not only administratively unenforceable but would interfere with the legitimate operations of family type farmers and small businessmen.

"By exempting non-profit religious, charitable, fraternal and educational associations, S. 984 disposes of the specious contention that purely religious institutions would be obliged to employ members of a different faith.

"By substituting the term 'religion' for 'creed', S. 984 answers those, who like former Representative Slaughter, felt that the latter term was far too vague and ill-defined.

"By eliminating the blacklist against Federal contractors who discriminate, by furnishing technical assistance to persons under the Act so as to further compliance, by authorizing the Commission to help employers whose employees refuse or threaten to refuse to cooperate with the policies of the Act, and above all, by making 'conference, conciliation and persuasion' a mandatory first step, while providing at the same time that the results of such endeavors may not be used in evidence, the sponsors of S. 984 have clearly demonstrated, all charges to the contrary notwithstanding, that the bill is therapeutic and not punitive in its intent.

"By removing all time limitations upon Congress' right by concurrent resolution to nullify any rule or regulation of the Commission, S. 984 assures that the Commission will operate as an agency responsible to public opinion as that opinion is reflected in Congress. This same concern for making the Commission responsive to public opinion is reflected in the provisions for the establishment of local advisory councils, and in the requirement that hearing officers must be residents of the judicial circuit where the alleged unlawful employment practice occurred.

"Critics of earlier legislation prohibiting discrimination in employment laid much stress on the alleged procedural weaknesses of those bills. S. 984 seeks to provide every possible protection for those coming under its jurisdiction. It incorporates all of the reforms adopted by Congress in the Administrative Procedure Act, including separation of the investigative or prosecutive functions from the adjudicative functions, issuance of declaratory orders to terminate a controversy, and an enlarged scope of judicial review.

"In addition, it sets up safeguards against irresponsible complaints by limiting the period within which complaints may be filed to one year after the alleged violation, by requiring that a sworn written charge be filed by or in behalf of an aggrieved person, and by providing that three members of the Commission hear oral arguments after the evidence is compiled. Will the critics of former bills now object to the explicit procedures which they themselves so ardently advocated?¹

1. Testimony of Henry Epstein, Chairman, National Community Relations Advisory Council.

Chief Points of Difference Between Ives Bill (S. 984, 80th Cong.) and Chavez Bill (S. 101, 79th Cong.) ¹

<i>Subject</i>	<i>S. 984</i>	<i>S. 101</i>
Findings	Act intended in part to fulfill obligation of United Nations Charter—Sec. 2(c).	Findings contain no reference to treaty obligations—Sec. 1.
Application to U.S. Gov't.	Applicable to agencies of Federal government—Sec. 3(b). Commission may request President to obtain compliance—Sec. 10	Applicable to agencies of Federal government—Sec. 16 (2). President <i>required</i> to secure compliance with orders, and Federal employee who violates order to be discharged—Sec. 4(c).
Application to Federal contractors	President to make rules to prevent discrimination by Federal contractors employing 50 or more employees whether or not engaged in interstate commerce; enforceable by Commission—Sec. 10.	Applicable to Federal contractors and sub-contractors employing 6 or more employees whether or not engaged in interstate commerce—Sec. 4(a).
Application to States	Act not applicable to States, municipalities or political subdivisions—Sec. 4.	No provision
Limitation as to number of employees	Applies only to employers of 50 or more employees—Sec. 3(b).	Applies only to employers of 6 or more employees—Sec. 4(a).
Other exemptions	Exempts non-profit religious, charitable, fraternal, social, educational or sectarian organizations—Sec. 4.	No other exemptions.

1. Testimony of Dr. Stephen S. Wise, President, American Jewish Congress.

<i>Subject</i>	<i>S. 984</i>	<i>S. 101</i>
Illegal practices of employers	To refuse to hire, discharge or otherwise discriminate because of race, etc.—Sec. 5(a)(1); to recruit employees through employment agency, union or other source which discriminates—Sec. 5(a)(2).	Same—Sec. 3(a).
Illegal practices of unions	To discriminate against any person or to classify membership so as to deprive such person of employment opportunities or otherwise affect his status as an employee or applicant for employment or his working conditions, because of race, etc.—Sec. 5(b).	To deny full membership rights or to expel any person or to discriminate against any member, employer or employee because of race, etc.—Sec. 3(b).
Enforcing agency	National Commission Against Discrimination in Employment; seven members—Sec. 6(a).	Fair Employment Practice Commission; five members—Sec. 5.
Charges by private parties	Sworn written charge must be filed by or on behalf of person claiming to be aggrieved—Sect. 7(a).	Charge may be filed by anyone even though not aggrieved and need not be sworn to—Sec. 10(b).
Charges by Commission	Charge may be filed by member of Commission—Sec. 7(a).	No provision.
Conciliation	Commission must endeavor to eliminate unlawful practice by informal methods <i>before</i> issuing complaint—Sec. 7(a).	No requirement of informal conciliation efforts at any stage of case.
Conciliation efforts in evidence	Nothing said or done during conciliation efforts may be used in evidence—Sec. 7(a).	No limitation on use as evidence.

<i>Subject</i>	<i>S. 984</i>	<i>S. 101</i>
Issuance of complaint	Commission serves verified charge filed by complainant —Sec. 7(b).	Commission prepares and issues complaint in its own name — Sec. 10(b).
Hearing officer	Hearing officer must be resident of judicial circuit where violations occurred —Sec. 6(f).	No limitation — Sec. 10(b).
Adjudication	Sec. 7(k) adopts Sec. 5(c) of Adm. Pro. Act providing for separation of functions of hearing officer.	No provision.
Declaratory orders	Sec. 7(k) adopts Sec. 5(d) of Adm. Pro. Act authorizing agency to issue declaratory orders.	No provision.
Ancillary procedural matters	Sec. 7(k) adopts Sec. 6 of Adm. Pro. Act governing interventions, subpoenas, denials of motions, etc.	No similar detailed provisions.
Hearings	Sec. 7(k) adopts Sec. 7 of Adm. Pro. Act governing powers of hearing officer, burden of evidence, etc.	No provision.
Decision	Sec. 7(k) adopts Sec. 8 of Adm. Pro. Act as to report by hearing officer, tentative findings, right to file briefs, etc.	No provision.
Hearing before agency	3 members of Commission must hear oral arguments after hearing—Sec. 7(d).	No provision.

<i>Subject</i>	<i>S. 984</i>	<i>S. 101</i>
Scope of judicial review	Incorporates Administrative Procedure Act — Sec. 8(a). Sec. 10(e) of that Act gives broad ground of review; findings must be sustained by substantial evidence on the whole record and must not be arbitrary or capricious.	Incorporates provisions of NLRA under which Board findings are conclusive in court if supported by substantial evidence—Sec. 10(e).
Adoption of rules and regulations	Commission may make "suitable" rules, subject to Administrative Procedure Act, but Congress may nullify them by concurrent resolutions at any time—Sec. 13.	Commission may make "suitable" rules which become effective in 60 days unless Congress nullifies them or adjourns within 30 days—Sec. 12.
General powers of investigation	Commission given broad powers of investigation and study—Sec. 6(d), 6(g)(6).	Commission shall make reports on causes of and means of alleviating discrimination.
Advisory bodies	Commission may create local and regional advisory bodies of representative citizens to study discrimination and foster good will—Sec. 6(g)(7).	No provision.
Assistance to persons subject to Act	Commission may furnish employers subject to Act technical assistance to further compliance—Sec. 6(g)(4). It may assist employers whose employees refuse to cooperate—Sec. 6(g)(5).	No provision.
Limitation on filing charges	Charges must be filed within one year of violation—Sec. 7(h).	No time limitation on filing charges.

<i>Subject</i>	<i>S. 984</i>	<i>S. 101</i>
Criminal penalties	Up to \$500 and/or 1 yr. for <i>forcible</i> interference with Commission agents — Sec. 14.	Up to \$5000 and/or 1 year for <i>wilful</i> interference with Commission agents—Sec. 14.
Notices	Employers and unions must post notices on their premises describing Act — Sec. 11.	No provision.
Veterans	Act not to be construed as modifying rights of veterans—Sec. 12.	No provision.

What FEPC Does Not Do

Having pointed out in the preceding section how the FEPC bill operates, it is well to point out what the bill does not do in order to clarify some common misconceptions.

The following questions and answers have been taken in part from a pamphlet entitled "Elimination of Discrimination in Employment" from the remarks of Senator Denis Chavez of New Mexico in the U.S. Senate on May 26, 1947. (Copies of this pamphlet are available upon request from the National Council for a Permanent FEPC, 930 F St., N.W., Washington, D.C.)

1. FEPC does *not* require an employer to hire Negroes, Jews, Mexicans or other minorities—An employer may hire or reject anyone he pleases, on any basis and for any reason, so long as a needed and qualified person is not rejected because of his race, color, creed, national origin, or ancestry.

2. FEPC does *not* require an employer to hire a particular percentage of any minority group—It provides only that employees shall be selected on the basis of their qualifications. A quota plan makes hiring dependent upon race and is, therefore itself discriminatory.

3. FEPC does *not* apply to small retail stores, domestic servants or religious associations—It applies only to those employers who are engaged in interstate commerce and who employ 50 or more persons.

4. FEPC does *not* confer special privileges on minorities—It merely assures equality of opportunity and equality of treatment. It requires that persons shall be hired on the basis of their qualifications and not rejected because of the immaterial fact of their color, or religion, or place of birth.

5. FEPC does *not* promote social equality—The bill has nothing to do with personal or social relationships. It is concerned only with equality of job opportunity.

6. FEPC does *not* interfere with management's right to hire or with labor's right to manage its own affairs—Management is left free to set its hiring, training, and upgrading practices, to adjust its internal plant policy, and to discharge according to any standard it

may adopt, so long as there is no arbitrary discrimination because of race, religion, color, national origin or ancestry. In the same way, organized labor is free to manage its internal affairs according to its own rights, except that it cannot deny any of the advantages or opportunities of union organization and collective bargaining to any person because of race, religion, color, national origin, or ancestry.

7. FEPC does *not* guarantee jobs for members of minority groups—The bill does not insure jobs for anyone. The FEPC simply provides that all individuals regardless of race, religion, color or national origin shall be guaranteed an equal *opportunity* for whatever jobs are available.

Answering the Critics

Even the most bitter foes of an FEPC have professed their opposition to discrimination and not a single voice has been raised in defense of such practices. This in itself reflects acceptance of the fact that discrimination is un-American, unjust and completely contrary to our democratic tradition. Since the opposition to FEPC is based not on the purpose of the legislation but on the method, let us examine some of the avowed objections.

1. "*. . . you cannot abolish prejudice by law.*"

This argument stems from a failure to distinguish between prejudice, which is a state of mind, and discrimination, which is an overt act. A man has a right to his individual prejudices, however wrongly conceived. But in a democracy, no man has the right to translate his prejudices into action which infringes on the rights and liberties of others. When prejudice is translated into active discrimination whereby men, solely because of their race, religion, color or national origin, are denied an opportunity of earning a livelihood for themselves and for their families, it is the proper function of government to prevent such practices. This is the prime objective of all Civil Rights Laws—to prevent discrimination, not to abolish prejudice. This is the objective of the FEPC bills—to prevent *discrimination* in employment. The word prejudice does not even appear in the bill.

2. "*. . . passage of this legislation will promote strife and conflict.*"

This argument is contrary to all experience. Decency and fair play have never fostered strife. On the contrary, such tension and conflict arises only when people feel they cannot obtain redress from their government for a recognized evil. Only when a government disregards the demand for justice, do citizens, in desperation, turn to disorder and rioting. Members of minority groups who have fought and bled for our democracy cannot be expected to sit by passively and be told, "You have won freedom for the peoples of all the world, but it is to be denied you here at home." The whole purpose of this legislation is to minimize tensions by providing an orderly procedure for dealing with employment discrimination. Through the FEPC it will be possible to work out amicable solutions to situations which might otherwise lead to strife. Passage of this legislation will

minimize the likelihood of conflict by eliminating one of the basic causes for such conflict—the denial of an equal opportunity to make a living and make a life.

3. *"... the problem can be solved by the courts without setting up any new administrative agency."*

Society has a stake in eliminating discrimination and should therefore assume the responsibility and costs of such enforcement, rather than leave it to private parties to hire their own lawyers to enforce the national policy. Such enforcement by private suit is haphazard and means long-drawn, complicated, expensive litigation. An administrative agency is necessary—

(a) To prevent the flooding of courts and the clogging of their calendars to the detriment of their other work;

(b). To screen out worthless complaints which otherwise would harass innocent employers or unions. A respondent has to defend every suit filed in court, but most administrative agencies dismiss from two-thirds to three-fourths of all charges submitted;

(c) To protect the rights of employees without compelling them to hire their own lawyers;

(d) To insure speedy action and avoid delays and excessive costs in the courts;

(e) To insure uniformity by having one agency interpret the bill instead of 94 Federal district courts;

(f) To permit a commission of experts to devote full time to the problem;

(g) To avoid the necessity of criminal penalties which juries hesitate to impose.

4. *"... the solution to the problem of discrimination lies in education rather than legislation."*

The basic fallacy of this argument is to counterpose education against legislation as though each were an independent and opposing entity. Today educators everywhere subscribe to the thesis of learning by doing, just as legislators recognize that law constitutes one of the most powerful instruments of education. To the extent that a dichotomy exists between the principles taught in our schools and the practices which obtain outside them, to that extent educa-

tion itself is rendered suspect. The complementary character of education and legislation is strikingly demonstrated by the fact that it became necessary to pass laws making school attendance compulsory before our educational system itself was able to function effectively. It is almost a universal maxim that "honesty is the best policy." Nevertheless, laws dealing with departures from that policy are no less universal. Indeed, the Ten Commandments themselves have had to be reinforced by legal sanctions. Laws do not of themselves ever automatically end the abuses they are designed to correct. Our criminal statutes have not eliminated crime nor have the juvenile courts abolished delinquency. Laws do, however, establish criteria by which our actions may be judged. Passage of this legislation will establish that employment discrimination is inimical to the public welfare. It will indicate that public policy is opposed to hiring standards based on race, religion, color, or national origin, and it will thus provide a frame of reference within which the necessary educational processes can be accelerated.

Who's Supporting the Bills

NATIONAL ORGANIZATIONS (partial list)

Alpha Kappa Alpha Sorority
Alpha Phi Alpha
Amalgamated Clothing Workers of America
American Civil Liberties Union
American Council on Race Relations
American Federation of Labor
Americans for Democratic Action
American Friends Service Committee
American Jewish Committee
American Jewish Congress
American Unitarian Association
American Unitarian Youth
American Veterans Committee
Americans United for World Organization
B'nai B'rith
Brotherhood of Sleeping Car Porters
Catholic Interracial Council
Catholic War Veterans
Central Conference of American Rabbis
Church League for Industrial Democracy
Committee of Racial Equality
Common Council for American Unity
Congregational Christian Churches (Council for Social Action)
Congress of Industrial Organizations
Council Against Intolerance in America
Delta Sigma Theta Sorority
Evangelical and Reformed Church, General Synod
Federal Council of the Churches of Christ in America
Fraternal Council of Negro Churches in America
Girl Friends
Improved Benevolent & Protective Order of Elks of the World
Industrial Union of Marine and Shipbuilding Workers of America
International Ladies Garment Workers Union
Japanese-American Citizens League
Jewish Labor Committee
Jewish War Veterans of the United States
Kappa Alpha Psi

League of United Latin American Citizens
 Methodist Church, General Conference
 Methodist Ministers' Union
 National Alliance of Postal Employees
 National Association for the Advancement of Colored People
 National Association of Colored Graduate Nurses
 National Bar Association
 National CIO Committee to Abolish Racial Discrimination
 National Community Relations Advisory Council
 National Conference of Christians and Jews
 National Consumers League
 National Council of Catholic Women
 National Council of Jewish Women
 National Council of Negro Women
 National Council of Student Christian Associations
 National Farm Labor Union, A. F. of L.
 National Negro Insurance Association
 National Religion & Labor Foundation
 National Urban League
 National Women's Trade Union League of America
 Negro Newspaper Publishers Assn.
 Omega Psi Phi
 Postwar World Council
 Presbyterian General Assembly
 Retail, Wholesale and Department Store Union
 Sigma Gamma Rho Sorority
 Students for Democratic Action
 Synagogue Council of America
 Union of American Hebrew Congregations
 United Automobile, Aircraft and Agricultural Implement Workers
 of America
 United Council of Church Women
 United Hatters, Cap and Millinery Workers International Union
 United Mine Workers of America
 United Packinghouse Workers of America
 United Transport Service Employees Union
 Women's International League for Peace and Freedom
 Workers Defense League
 Young Men's Christian Association, National Board
 Young Women's Christian Association, National Board

Bibliography

Annual Reports:

✓ New York State Commission Against Discrimination, 270 Broadway, New York City, N. Y.

✓ State of New Jersey, Division Against Discrimination, 1060 Broad Street, Newark, N. J.

✓ Massachusetts Fair Employment Practice Commission, 73 Tremont Street, Boston, Mass.

(Available from the respective commissions, etc.)

Anti-Discrimination in Employment. Hearings before a Sub-committee of the Committee on Labor and Public Welfare, United States Senate, Eightieth Congress, First Session, on S. 984. 1947. U.S. Government Printing Office, Washington, D.C.

Cohen, Felix. "The People vs. Discrimination". *Commentary* (March, 1946), pp. 17-22. (Reprints available from Community Relations Service, 386 Fourth Avenue, New York 16, N. Y.)

7 *Discrimination Costs You Money.* UAW-CIO Fair Practices Department, 5701 Second Boulevard, Detroit 2, Michigan.

Elson, Alex and Schonfield, Leonard. "Local Regulation of Discriminatory Employment Practices." (February, 1947) *Yale Law Journal*. (Available from American Council on Race Relations, 32 West Randolph Street, Chicago 1, Illinois.)

✓ *Fair Employment Legislation in New York State: Its History, Development and Suggested Use Elsewhere.* 1946. International Committee of the YMCA. (Available from Anti-Defamation League, 212 Fifth Avenue, New York 10, N. Y.)

Fair Employment Practice Committee. *Final Report.* 1947. U.S. Government Printing Office, Washington, D.C. 30 cents.

Inside Facts. (Available from New York State Commission Against Discrimination, 270 Broadway, New York, N. Y.)

Justice on the Job. 1947. National Council for a Permanent FEPC, 930 F Street, N.W., Washington 4, D.C.

Maslow, Will. "FEPC—A Case History in Parliamentary Maneuver." (1946) 13 *U. of Chicago Law Review*, 407. (Available from Commission on Law and Social Action, American Jewish Congress, 1834 Broadway, New York, N. Y.)

Ross, Irwin. "New York's FEPC Pays Off", *This Week* (August 25, 1946). (Reprints available from Community Relations Service, 386 Fourth Avenue, New York 16, N. Y.)

Ross, Malcolm. "They Did It in St. Louis", *Commentary* (July, 1947), pp. 9-15. (Reprints available from Community Relations Service, 386 Fourth Avenue, New York 16, N. Y.)

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